No. 09-1542

In The

Supreme Court of the United States

ZINNIA I. CHEN, et al.,

Petitioners,

vs.

HON. KENNETH R. LESTER, JR., et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION OF CHUCK SMITH TO THE PETITION FOR WRIT OF *CERTIORARI*

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QUESTION PRESENTED

Did the Eleventh Circuit Court of Appeals err in affirming the decision of the United States District Court for the Middle District of Florida, Orlando Division, to dismiss the Petitioner's Amended Complaint with prejudice for failure to state a claim for which relief could be granted?

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STATEMENT OF THE CASE AND OF THE FACTS

The above captioned Petition for Writ of Certiorari is an effort by Zinnia I. Chen, Charlie H. Davis, Leyda E. Chew, Michael Taylor and Mary C. Fox (collectively, "Ms. Chen"), to have this Court review the Eleventh Circuit Court of Appeal's affirmance of the United States District Court for the Middle District of Florida's entry of a Final Judgment in favor of Chuck Smith ("Mr. Smith"), and the remaining Co-Respondents, pursuant to an order granting the various Co-Respondents' Motions to Dismiss with prejudice Ms. Chen's Complaint. The Eleventh Circuit's per curiam opinion is dated February 1, 2010. The District Court's order that was affirmed is dated March 19, 2009. Both documents are appropriately set forth in the appendix to the Petition.

Ms. Chen initiated the underlying lawsuit with the filing of a Complaint on November 18, 2008. (Document #1).[1] Before any responses to the Complaint were filed, Ms. Chen filed an Amended Complaint on December 8, 2008. (Document #4). It is this Amended Complaint that was the operative pleading on behalf of Ms. Chen at the District Court level, although the document itself is not identified as an Amended Complaint.

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[1] Document numbers refer to the numbers assigned to documents filed with the District Court.

The various Co-Respondents all filed Motions to Dismiss Ms. Chen's Amended Complaint. Mr. Smith's Motion to Dismiss was filed with the court on January 8, 2009. (Document #65). Ms. Chen filed an Opposition to Mr. Smith's Motion to Dismiss and Supporting Memorandum of Law on February 26, 2009. (Document #133). In addition, on this same date, Ms. Chen filed a Motion to Amend her Complaint as to Mr. Smith. (Document #134).

After considering the allegations of the Amended Complaint as well as the arguments set forth in the various Motions to Dismiss the Amended Complaint, Chief Judge Anne C. Conway issued an order that was entered on March 19, 2009 that had the effect of granting the various Motions to Dismiss. (Document #151). Ms. Chen filed her Notice of Appeal of the District Court's order on the same date, March 19, 2009. (Document #152).

The underlying facts in this litigation are somewhat difficult to decipher given the nature of the content of the various documents that Ms. Chen filed below, a flaw which the District Court noted in its March 19, 2009 order, and a flaw which continues to manifest itself with the filing of Ms. Chen's Petition for Writ of Certiorari. Breaking down the contents of Ms. Chen's Amended Complaint, it appears that this litigation is an effort on the part of Ms. Chen to have the federal court review the determination of state court judges within the state of Florida who issued rulings and entered orders that were contrary to her interests in a dependency hearing. From the

allegations of the Amended Complaint, it appears that Ms. Chen is seeking redress for the decision of a Florida State Circuit Court judge to deprive Ms. Chen of custody of her children, to limit her contact with her children to supervised visitation, and to otherwise restrict her parental rights.

Mr. Smith, as is properly alleged in Ms. Chen's Amended Complaint, is the principal of the Faith Christian Academy, a private school located within the Middle District of Florida, where Ms. Chen's children attended school. (Document #4, page 8). The specific allegations against Mr. Smith within the Amended Complaint are vague, but what appears to be the crux of Ms. Chen's allegations is that Mr. Smith was involved in the transfer of custody of Ms. Chen's minor children pursuant to the Florida State Court's order. (Document #4, page 8). Ms. Chen then goes on to make the conclusory statement that Mr. Smith violated federal statutes and the Constitution. (Document #4, page 13). There is no specific allegation contained within the Amended Complaint to support the contention that Mr. Smith was a state actor capable of committing a violation of Ms. Chen's civil or constitutional rights.

Ms. Chen's Amended Complaint contained 11 counts, none of which stated a claim for which relief can be granted, and therefore the District Court properly entered an order dismissing Ms. Chen's claim with prejudice, which the Eleventh Circuit appropriately affirmed. Count I of the Amended Complaint is an allegation of a violation of 42 U.S.C.

§§ 1983-1986. (Document #4, page 25). Counts II and III are really not causes of action at all, but are rather citations to the legal authority identifying the oath that legislators and constitutional officers must take, as well as guidelines for administering the oath. (Document #4, pages 25-26). Counts IV-VIII are all accusations of criminal conduct, none of which give rise to a civil cause of action. (Document #4, pages 26-28). Count IX of the Amended Complaint is for breach of a contractual agreement, although notably Mr. Smith is not a party to that agreement. (Document #4, pages 28-29). Count X is for an alleged violation of Chapter 39, Florida Statutes, which addresses the protection of children. (Document #4, pages 29-30). Finally, Count XI of the Amended Complaint is for an alleged violation of Ms. Chen's Fifth Amendment rights. (Document #4, pages 30-31).

There are no specific allegations contained within the Amended Complaint that would explain why anyone other than Ms. Chen has been identified as a Plaintiff in the underlying lawsuit. In spite of this fact, Charlie H. Davis, Leyda E. Chew, Michael Taylor and Mary C. Fox were all listed as Plaintiffs in the Amended Complaint, and are all listed as Petitioners here. There are no allegations contained within the Amended Complaint to support a cause of action on behalf of any of these four individuals. Indeed, the District Court noted in its March 19, 2009 order that there was no apparent reason for the inclusion of these individuals as Plaintiffs in this lawsuit. (Document #4, page 5). Ms. Chen inexplicably included

documents from court papers involving these four individuals as part of the record on appeal both within the record presented to the District Court, as well as documentation presented to the Eleventh Circuit.

The District Court's March 19, 2009 order is an extremely detailed 36-page document that goes into the specifics of Ms. Chen's Amended Complaint, and addresses the arguments raised in each of the various Motions to Dismiss filed on behalf of the Co-Respondents. (Document #151). As to the allegations against Mr. Smith, the District Court found: "Plaintiffs seem to allege that Smith violated state court orders by removing Chen's children from school without her consent and transporting them to Seminole County authorities." (Document #151, page 22-23). The District Court's ruling as to Mr. Smith's Motion to Dismiss was as follows:

> Smith moves to dismiss the Amended Complaint pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. (Doc. No. 65 pp. 6-8). Specifically, Smith argues that Plaintiffs have failed to state any facts to support their claim that Smith acted "for the government in such a way as to qualify as a state actor capable of violating Plaintiffs' Fifth Amendment rights." (***Id***. at p. 8).
>
> The Court finds that Plaintiffs have failed to allege sufficient state action to support a § 1983 [claim] against Smith. Specifically,

> Plaintiffs do not allege any facts suggesting that Smith was encouraged by a state actor to remove Chen's children from school, that Smith acted jointly with a state actor, or that Smith's conduct was "significantly affected with state involvement." *See* ***Willis [v. University Health Services, Inc.***, 993 F.2d 837 (11th Cir. 1993)]. Accordingly, Smith's motion to dismiss will be granted on this basis.

(Document #151 at page 23).

At the conclusion of the District Court's order, the District Court indicated that Mr. Smith's Motion to Dismiss Plaintiffs' Amended Complaint with Prejudice (Document #65), filed on January 8, 2009 is granted. (Document #151 at page 35). In addition, the District Court's order indicated that the entire litigation would be dismissed with prejudice, with the following finding: "In light of Plaintiffs' persistent history of filing baseless and largely incomprehensible pleadings which have impacted the resources of this Court, as well as of Defendants, the Clerk is directed not to accept for filing any future pleadings submitted by Plaintiffs in this case, except for a notice of appeal." (Document #151 at page 36).

The Eleventh Circuit considered all of the arguments that Ms. Chen raised on appeal, and rejected every one of them. The Circuit Court agreed with the District Court's analysis that Mr. Smith was never alleged to be a state actor, and as a result he could not be liable for an alleged violation of

42 U.S.C. § 1983. The Circuit Court also agreed with the analysis of the District Court that supported the dismissal of Ms. Chen's Amended Complaint as to each of the other Co-Respondents. The Circuit Court's February 1, 2010 opinion also sets forth the rationale for affirming the District Court's decision to abstain from addressing ongoing state court proceedings pursuant to this Court's decision in ***Younger v. Harris***, 401 U.S. 37, 91 S.Ct. 746 (1971). The Eleventh Circuit also analyzed and rejected Ms. Chen's remaining substantive claims. Finally, the Eleventh Circuit found that the District Court judge properly refused to recuse herself, and appropriately refused to allow Ms. Chen to amend her Complaint once again, because to do so would be futile. The Eleventh Circuit's 20 page opinion properly affirmed the District Court's 36 page order in all respects, and there is nothing contained within either the District Court's order or the Eleventh Circuit's opinion that would trigger this Court's jurisdiction.

ARGUMENT

I. THE DISTRICT COURT PROPERLY DISMISSED MS. CHEN'S LAWSUIT WITH PREJUDICE, AS SHE FAILED TO STATE A CLAIM FOR WHICH RELIEF COULD BE GRANTED, HER REQUESTED RELIEF WAS BARRED BY THE ABSTENTION DOCTRINE, AMENDMENT WOULD HAVE BEEN FUTILE, AND SHE HAS NO LEGITIMATE BASIS TO PURSUE ADDITIONAL REVIEW FROM THIS TRIBUNAL.

The instant Petition is an effort by Ms. Chen to have this Court review the affirmance issued by the Eleventh Circuit of the order of the District Court which had the effect of dismissing Ms. Chen's Amended Complaint with prejudice. There is no basis contained within the Petition that would support the issuance of a writ as Ms. Chen requests. The record reveals that Ms. Chen filed what can at best be described as an unwieldy original Complaint, with confusing allegations spread across a broad spectrum of Defendants, without any cohesion or clarity to the written allegations. Ms. Chen's Amended Complaint was similar to the original Complaint in its lack of organization.

Mr. Smith moved to dismiss the First Amended Complaint for the failure to state a cause of action for which relief could be granted. Indeed, there is no way to assert a federal claim for violation of 42 U.S.C. § 1983 against Mr. Smith, a private individual, who has no connection to Ms. Chen whatsoever other than

being the Principal of the Faith Christian Academy, the private school that Ms. Chen's children attend.

Ms. Chen's Amended Complaint is just as incomprehensible as the documents she has filed with this Court and with the Eleventh Circuit Court of Appeals. In her various filings, Ms. Chen raised the same incoherent charges against the various Defendants. The District Court properly recognized that the Amended Complaint was deficient, and warranted dismissal. Given the nature of the other filings with which Ms. Chen had clogged the District Court, the District Court properly ordered that the dismissal would be with prejudice. With ample opportunity to review the District Court's decision, the Eleventh Circuit Court of Appeals affirmed the District Court in all respects.

There is nothing contained within Ms. Chen's Petition for Writ of Certiorari that compels any conclusion other than the Petition should be denied. In fact, the Petition filed with this Court closely resembles the Complaints that were ultimately rejected at the District Court level, and the appellate brief that was rejected at the Circuit Court level. The allegations against the various Co-Respondents are haphazard, incoherent, and likewise fail to state a cause of action for which relief can be granted. There was no allegation in either of the complaints filed with the District Court that raised a colorable argument to support a cause of action against Mr. Smith. There was likewise nothing within the

Petition to support the issuance of a writ in this case. In the absence of any coherent argument to support a reversal of the Circuit Court's affirmance of the District Court's dismissal of the Amended Complaint with prejudice, the District Court's order must be allowed to stand, and this Court should deny Ms. Chen's Petition for Writ of *Certiorari*.

CONCLUSION

For the reasons stated herein, the Respondent respectfully requests that this Court deny Ms. Chen's Petition for Writ of *Certiorari*, and affirm the District Court and the Circuit Court in all respects.

Respectfully submitted,

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